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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,980	09/09/2003	Cedric Geffroy	RDN02124	1308

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EXAMINER

KUMAR, PREETI

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,980

Applicant(s)

GEFFROY, CEDRIC

Examiner

Preeti Kumar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 53 and 95-99 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53 and 95-99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's election without traverse of group II, claims 53, 95-99 in the reply filed on November 3, 2005 is acknowledged.
2. Claims 54-94 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 3, 2005.
3. Claims 53 and 95-99 are pending. Claim 53 is independent

### ***Claim Objections***

4. Claim 53 and 97 are objected to because of the following informalities: In claim 53, the abbreviations of MR and MAV are unclear throughout the claim. For example, MR in line 2 of claim 53 denotes aqueous-alcoholic medium and in line 21-22 MR denotes rinsing medium. MAV in line 10 of the claim also denotes an aqueous-alcoholic medium. MAV goes on to denote just medium in line 14. Appropriate corrections are required throughout the entire claim. Claim 53 is further objected since it is replete with grammatical problems. For example, the limitations of vehicle V in the last paragraph of the claim do not formulate a complete sentence. Examiner suggests adding 'and' before the phrase "at the pH of the rinsing operation".

In claim 97, the limitation to "within its particles" is unclear since it is not apparent from the claim language if the MAO is encapsulated within A or F. Appropriate correction is required. However, for examination purposes, examiner has interpreted

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the claim to recite limitation of the MAO encapsulated within F; said interpretation is supported by applicants specification 2005/0097678 in paragraph [0335].

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 53 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 53 provides for the use of a formulation, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. Furthermore, it is indefinite if the vehicle is in a stable dispersion or the active substance and the vehicle are in a stable dispersion or if the active substance, aqueous medium and vehicle are in a stable dispersion? Furthermore it is indefinite if the solid form is describing the vehicle or the active substance or both?

Claim 53 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Double Patenting***

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to

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identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claims 95-96 and 99 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 39, 40 and 43 of copending Application No. US 10/658,577. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented. The subject matter claimed in the instant application is fully and identically disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming identical subject matter, as follows: The process of contacting a textile article by rinsing with 0.001 to 5 g/l of a formulation F (comprising a solid organic active substance) and recovering the textile article.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 53, 95-99 are rejected under 35 U.S.C. 102(b) as being anticipated by Altmann et al. (EP 1096060).

Altmann et al. teach a wrinkle resistant rinsing medium having a pH between 4 and 8 [see 0144] comprising tert-butyl acrylate active substance in particulate form and a acrylic acid vehicle [see 0033-0039 and 0044 and 0056], the aqueous or aqueous-alcohol medium such as mixtures of water with an alcohol [see 0106] and a hydrophobic active agent such as perfumes, colorants and dyes [see 0114-0117, 0134, 0137 and 0145] and a cationic surfactants and antimicrobial agents [see 0090-0093 and 0124-0130]. Specifically regarding the process step of contacting, Altmann et al. teach that the wrinkle resistant composition may be in a variety of forms and is applied by soaking, washing, or rinsing the textile articles with the aforementioned composition. See [0146

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and 0151]. In table [0373] Altmann et al. teach in formulation E about 3.7% of dry matter in 96.3% water which weight percent of formulation anticipates the claimed volume. Accordingly the teachings of Altmann et al. anticipate the material limitations of the instant claims.

13. Claims 53, 95-99 are rejected under 35 U.S.C. 102(b) as being anticipated by Barnabas et al. (WO 00/65014).

Barnabas et al. teach a process of using a treating composition to provide improved color appearance and/or pill prevention and/or abrasion resistance and/or wrinkle resistance and/or shrinkage resistance benefits, while at the same time providing improved cleaning benefits. See abstract.

Regarding the formulation intended for use in an operation of rinsing textile fiber articles by means of an aqueous or aqueous-alcoholic medium, said formulation, comprising at least one active substance comprising a solid organic polymer in particulate form, Barnabas et al. teach a tert-butyl acrylate copolymer and an acrylic acid vehicle. (See example IV and V) on pages 55-57.

Barnabas et al. teach a formulation such that, during use in aqueous cleaning operations, the aqueous medium, such as wash water will have a pH of between about 6.5 and about 11. Techniques for controlling or varying pH at recommended usage levels include the use of buffers, alkalis, acids, etc., and are well known to those skilled in the art. (See page 5, ln.22-25). In examples VIII and IX Barnabas et al. illustrate formulations having a pH of 3-6. See page 59-60.

Barnabas et al. teach a formulation comprising a cationic surfactant, namely, ammonium surfactants and quaternary ammonium compounds (See page 17, ln.10-32).

Barnabas et al. teach a rinse medium comprising xanthan, gellan and wellan gums. (See page 3, ln.4 and page 10, ln.31-32 and page 11).

Barnabas et al. teach a hydrophobic active substance, namely a sulfonated zinc phalocyanine optical brightener encapsulated in dextrin soluble polymer. See page 51,ln.5-25 and page 53, ln.6-8.

Regarding claim 99, Barnabas et al. teach that the formulation can be in solid, liquid or gel forms. See page3,ln.15. Barnabas et al. teach that in a process of using the formulation in a wash or rinse added method, using about 0.01% to about 30% of the formulation is deposited onto the fabric articles. See page 4,ln.5-15. Barnabas et al. illustrate by example about 2 -30wt % of a formulation comprising t-butyl acrylate/acrylic acid copolymer and surfactant and perfume and the balance (about 98-70%) being water. See example V and VIII formulations a-f on pages 56-59.

Regarding the claimed properties/nature of the active substance, aqueous or aqueous-alcoholic medium, and of the vehicle being such that: the active substance is insoluble in the medium, has an overall zero or cationic charge in the medium, is stabilized in the medium by means of a cationic surfactant, it being possible for said cationic surfactant to be wholly or partly replaced by a nonionic surfactant when the polymer constituting the active substance is intrinsically cationic or intrinsically potentially cationic in the medium, remains insoluble in the rinsing medium or is capable of swelling in the rinsing medium; and the vehicle is soluble or dispersible in the medium



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and in the rinsing medium, has an overall cationic or zero ionic charge in the medium, and at the pH of the rinsing operation in the rinsing medium is capable of developing nonionic charges in sufficient quantity to destabilize the active substance in the rinsing medium as recited by the instant claim 53; it is reasonable to presume that said limitations are inherent to the invention of Barnabas et al. because the presumption is supported by the use of similar materials (i.e. a rinse formulation comprising a tert-butyl acrylate active substance and an acrylic acid vehicle and an aqueous water medium and xanthan rinse medium and hydrophobic active substances such as dyes, perfumes, and germicides) and in the similar production steps (i.e. contact with textile fiber in a rinse bath) to impart antiwrinkle and fragrancing properties to the textile. The burden is upon the applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594.

Barnabas et al. illustrate about 2 % of formulation comprising t-butyl acrylate/acrylic acid copolymer and surfactant and perfume having a pH of 4.5-5 in about 98% water. See page 56-57 examples V, VI formulations f. Accordingly the teachings of Barnabas et al. anticipate the material limitations of the instant claims.

### ***Conclusion***

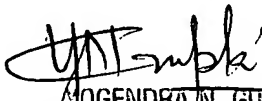
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 571-272-1320. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PK

  
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